

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

**ORIGINAL**

ILLINOIS  
COMMERCE COMMISSION

2008 MAR -7 A 10:35

CHIEF CLERK'S OFFICE

Respondent

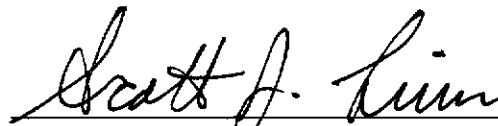
)  
)  
)  
)  
)  
) 07-0473  
)  
)  
)  
)  
)  
)

1

light on whether Movant was the entity: (a) responsible for the bill for service; (b) that benefited from the service; and (c) that agreed to pay for the service.

3. With regard to Data Requests 6, 7, 8 and 9 the Movant did not provide Respondent with the requested information because it is irrelevant to the issues raised by Respondent—Movant's ownership interest in the Property and responsibility for general electric service charges billed to the Property for the period in question. The Commission has already ruled that it has no jurisdiction over the PTFL Partnership, Musa Tadros, individually and Paula Tadros, individually, because they have not brought themselves before the Commission. (see attached Notice of Administrative Law Judge's Ruling, dated January 22, 2008). The information already provided to Respondent with regard to Data Requests 1, 2, 3, 4 and 5(1) should be more than sufficient in providing Respondent with the information it needs regarding the issues Respondent has raised and which are relevant to this matter.
4. For the foregoing reasons as stated by Movant in Paragraphs 1, 2 and 3 above, the Commission should not compel the Movant to provide the information requested by the Respondent in its Motion To Compel.

Respectfully submitted,

A handwritten signature in cursive script, reading "Scott J. Linn", written in black ink over a horizontal line.

Scott J. Linn, Attorney for Movant

Scott J. Linn, Esq.  
Attorney for Movant  
620 Butternut Trail  
Frankfort, IL 60423  
(815) 464-6663

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

CROWN COMMERCIAL REAL ESTATE  
AND DEVELOPMENT, INC.

Movant

vs.

COMMONWEALTH EDISON CO.

Respondent

)  
)  
)  
)  
) 07-0473  
)  
)  
)  
)  
)

**NOTICE OF FILING**

Mark L. Goldstein, Esq.  
Mark L. Goldstein, P.C.  
108 Wilmot Road, Suite 330  
Deerfield, IL 60015

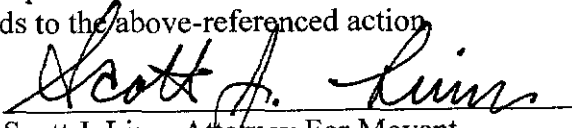
The Honorable Terrance Hilliard  
Administrative Law Judge  
Illinois Commerce Commission  
160 N. LaSalle Street  
Chicago, IL 60601

Bradley R. Perkins, Esq.  
Exelon Business Services Company  
10 South Dearborn St., 49<sup>th</sup> Floor  
Chicago, IL 60603

Ms. Elizabeth Rolando  
Chief Clerk  
Illinois Commerce Commission  
527 Capitol Avenue  
Springfield, IL 62701

To Whom It May Concern:

Notice is hereby given that on March 4, 2008, I filed Movant's Response To Respondent's Motion To Compel Responses To First Data Request To Complainant with Ms. Elizabeth Rolando, Chief Clerk of the Illinois Commerce Commission in regards to the above-referenced action.

  
Scott J. Linn, Attorney For Movant

Scott J. Linn  
Attorney For Movant  
620 Butternut Trail  
Frankfort, IL 60423  
(815) 464-6663



# ILLINOIS COMMERCE COMMISSION

January 22, 2008

Crown Commercial Real Estate  
and Development, Inc.

-vs-

Commonwealth Edison Company

Complaint as to billing/charges  
in Chicago, Illinois.

07-0473

Scott Linn, Attorney  
Crown Commercial Real Estate  
and Development, Inc.  
620 Butternut Trail  
Frankfort, IL 60423

Darryl Bradford  
Vice President  
Commonwealth Edison Company  
PO Box 805379  
Chicago, IL 60680-5379  
darryl.bradford@exeloncorp.com

Mark L. Goldstein  
Atty. for Commonwealth Edison Company  
Mark L. Goldstein, P.C.  
108 Wilmot Rd., Ste. 330  
Deerfield, IL 60015  
mlglawoffices@aol.com

Bradley R. Perkins  
Exelon Business Services Company  
10 S. Dearborn St., 49th Fl.  
Chicago, IL 60603  
brad.perkins@exeloncorp.com

## NOTICE OF ADMINISTRATIVE LAW JUDGE'S RULING

Dear Sir/Madam:

Notice is hereby given by the Administrative Law Judge that Respondent's motion to implead additional parties is denied. At issue in this Complaint case is whether the Complainant owes ComEd money for electric service provided to 3939 W. Ogden Ave., Chicago, IL. The Commission has jurisdiction over regulated utilities. The Commission has no jurisdiction over non-regulated parties who have not brought themselves before the Commission.

Notice is also given by the Administrative Law Judge that pursuant to the objection of the Respondent, the allegations of the Amended Formal Complaint citing Sections 1-102 and 8-101 of the PUA incorporated by reference from the Original Formal Complaint are stricken.

Sincerely,

*Elizabeth A. Rolando*  
Elizabeth A. Rolando  
Chief Clerk

EAR:cfr  
Administrative Law Judge Hilliard

cc: John Parise Jr., Senior Administrator, Regulatory Strategies & Services, Commonwealth Edison Company, 440 S. LaSalle St., Ste. 3300, Chicago, IL 60605,  
john.parise@exeloncorp.com



STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

CROWN COMMERCIAL REAL ESTATE  
AND DEVELOPMENT, INC.

Movant

vs.

COMMONWEALTH EDISON CO.

Respondent

)  
)  
)  
)  
) 07-0473  
)  
)  
)  
)  
)  
)

**MOVANT'S RESPONSE TO RESPONDENT'S  
MOTION FOR JUDGMENT ON THE PLEADINGS**

NOW COMES the Movant, CROWN COMMERCIAL REAL ESTATE AND DEVELOPMENT, INC. (hereafter "Movant"), by and through its attorney, SCOTT J. LINN and for Movant's Response To Respondent's Motion For Judgment On The Pleadings in this cause pursuant to Section 200.190 (e) of the Illinois Administrative Code states as follows:

**A. FACTS**

The Respondent first billed Movant for general electric service provided to the Property in a bill dated May 2, 2007, said bill stating that Movant owed Respondent a total of \$8,445.96 for general electric service provided to the Property for the period from April 2, 2005 up to and through April 2, 2007 (Mvnt's Amend Frm Cmplt. at pg. 2; and Exh. "E"). According to a transcript of Movant's account as prepared by Respondent, as of June 1, 2006 the Respondent had billed Movant a total of \$5,040.28 for general electric service provided to the Property for the period from April 2, 2005 to June 1, 2006. (Mvnt's Amend Frm Cmplt. at pg. 2; Exh "F"). On September 6, 2007 the Movant filed a Formal Complaint in this matter. In its Formal Complaint the Movant alleged that the Respondent's actions in requesting: (a) payment of general electric service charges in the amount of \$8,445.98; and (b) payment in full of this amount in one lump sum are in violation of Sections 1-102, 1-102(d) and 8-1-01 of the Public Utility Act because Respondent's requests were inequitable, unjust, unreasonable and would place an unfair financial burden on Movant. Thus, the Formal Complaint asked that Movant not be forced to pay the bill. (Mvnt's. Frm. Cmplt. at pgs. 1-3) On December 14, 2007 the Movant filed an Amended Formal Complaint which incorporated all of the pleadings listed in its Formal Complaint and also added new pleadings. These new pleadings alleged that it was clear that the Movant could not have been

liable for general electric service charges from June 1, 2006 to April 2, 2007 with regard to the Property. The pleadings stated that this was because the Movant had no legal interest in the Property during that period of time. Instead, as stated in the Amended Formal Complaint, the Paula Tadros Family Limited Partnership (the "PTFL Partnership") had obtained 100% of the beneficial interest in a land trust in which the Property was being held. (Mvnt's Amend Frm. Cmplt. at pgs. 1-2).

## **B. ARGUMENT**

In its Motion For Judgment On The Pleadings the Respondent makes three basic arguments: (a) that Movant's pleadings indicate that the PTFL Partnership should be impleaded into this proceeding and then be held responsible for general electric service charges for the period from June 1, 2006 up to and through April 2, 2007 in the amount of \$3,405.68. Further, that a judgment in that amount should be entered against the PTFL Partnership; (b) that Movant has not disputed that it is the responsible accountholder for the period from April 2, 2005 and up to and through June 1, 2006. Thus, it is responsible for paying for general electric service for that period in the amount of \$5,040.28. And, that a judgment in that amount should be entered against Movant; and (c) that Respondent has an absolute legal right to collect the entire bill for general electric service from Movant and the PTFL Partnership for the period from April 2, 2005 and up to and through April 2, 2007. This entire bill totaling \$8,445.98 in general electric service charges.

The Respondent's first basic argument for entry of a judgment on the pleadings should be rejected by the Commission for the following reason. First, it is an established principle of Illinois law that the granting of a motion for judgment on the pleadings pursuant to Section 2-615 of the Code of Civil Procedure is appropriate only where a plaintiff's complaint is legally insufficient such that the plaintiff can prove no set of facts that would entitle it to relief. In a motion for judgment on the pleadings, all well-pleaded facts are taken as true and all reasonable inferences that can be drawn from those facts are drawn in favor of the plaintiff. Jordan vs. Knafel, 291 Ill. Dec. 527, 823 N.E. 2<sup>nd</sup> 1113, 1119 (Ill. App. 1<sup>st</sup> Dist. 2005).

In the present case, in its Amended Formal Complaint the Movant has plead that the Property was held in a Land Trust until May 31, 2006 when 100% of the beneficial interest in the Land Trust was transferred to the PTFL Partnership. From May 31, 2006 and up to and through the present date the PTFL Partnership has held 100% of the beneficial interest in the Land Trust (Mvnt's Amend Frm Cmplt. at pgs. 1-2). The Commission has already denied Respondent's Motion to Implead the PTFL Partnership into the present case. In its ruling explaining this denial, the Commission stated that "The Commission has no jurisdiction over non-regulated parties who have not brought themselves before the Commission" (see attached Notice Of Administrative Law Judge's Ruling, dated January 22, 2008). Thus, based on Movant's pleadings as mentioned above, a judgment on the pleadings holding the PTFL Partnership responsible for \$3,405.68 in general electric service billings for the period from June 1, 2006 through April 2, 2007 cannot be entered. This is due to the fact that the PTFL Partnership has not brought itself before the Commission.

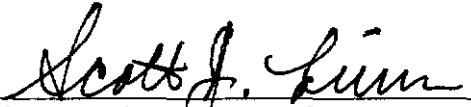
The Respondent's second argument is that a judgment on the pleadings should be entered in its favor and against the Movant for \$5,040.28 in general electric service charges billed for the period

from April 2, 2005 to June 1, 2006. The Commission should also reject this argument for the following reason. The Movant alleged in Paragraphs 4 through 8 of its Amended Formal Complaint that Respondent: (a) first established an account for purposes of billing Movant on April 20, 2007; (b) sent Movant a letter stating that Respondent had calculated that Movant owed \$8,445.96 for general electric service charges billed to the Property from April 2, 2005 to April 2, 2007; and (c) prepared a transcript of Movant's account showing that Respondent had billed Movant a total of \$5,040.28 for general electric service provided to the Property for the period from April 2, 2005 through June 1, 2006 ( Movnt's Amend Frm. Cmplt. at pg. 2).

In its Answer to Movant's Amended Formal Complaint the Respondent admits all of the above allegations. However, Respondent does not state why the account was established, how Respondent arrived at the amount actually billed, nor why it failed to bill the Movant until April 23, 2007. (Rspndt's Answer To Movant's Amend Formal Cmplt. at pg. 2). Thus, issues of material fact have been created which should preclude Respondent from being able to have a judgment on the pleadings entered in its favor. A judgment on the pleadings is appropriate only when an examination of the pleadings discloses the absence of any material issues of fact and the rights of the parties can be declared as a matter of law. Richco Plastic Co., vs. IMS Co., 288 Ill. App. 3<sup>rd</sup> 782, 681 N.E. 2<sup>nd</sup> 56, 59 (1<sup>st</sup> Dist. 1977). Where pleadings put in issue one or more material facts, evidence must be taken to resolve issues and a judgment may not be entered on the pleadings. Zipf vs. Allstate Insurance Co., 54 Ill. App. 103, 369 N.E. 2<sup>nd</sup> 252, 256 (1<sup>st</sup> Dist. 1977). Movant is entitled to a hearing on these issues of material fact where Respondent must present evidence showing that its billing of electric service charges to the Property are justified.

Finally, the Respondent argues that it is legally entitled to hold Movant and the PTFL Partnership responsible for the general electric service charges billed to the Property for the period from April 2, 2005 up to and through April 2, 2007. This is despite the fact that Respondent failed to bill or notify the Movant of general electric service charges for the foregoing period, until its letter to Movant of April 23, 2007. In support of this proposition the Respondent cites Section 280.100 of the Illinois Administrative Code (83 Ill. Adm. Code 280.100 (a) (2)). However, Respondent fails to cite any case law which holds that this statutory provision allows Respondent to retroactively go back and bill Movant for the period in question. Consequently, in response, Movant submits that Respondent's proposition is a mere legal conclusion. Movant further submits that Respondent's billing actions are in direct contravention of Section 9-101 of the Public Utilities Act (220 ILCS 5/9-101) which states that "All...charges...for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made... for such...service is hereby prohibited and declared unlawful..." And, as previously stated in this Response, the Commission has refused to make the PTFL Partnership a party to this proceeding. Thus, for the foregoing reasons the Respondent's Motion For Judgment On The Pleadings should be denied in its entirety by the Commission.

Respectfully submitted,

  
Scott J. Linn, Attorney for Movant





## ILLINOIS COMMERCE COMMISSION

January 22, 2008

Crown Commercial Real Estate  
and Development, Inc.

-vs-

Commonwealth Edison Company

Complaint as to billing/charges  
in Chicago, Illinois.

07-0473

Scott Linn, Attorney  
Crown Commercial Real Estate  
and Development, Inc.  
620 Butternut Trail  
Frankfort, IL 60423

Darryl Bradford  
Vice President  
Commonwealth Edison Company  
PO Box 805379  
Chicago, IL 60680-5379  
darryl.bradford@exeloncorp.com

Mark L. Goldstein  
Atty. for Commonwealth Edison Company  
Mark L. Goldstein, P.C.  
108 Wilmot Rd., Ste. 330  
Deerfield, IL 60015  
mlglawoffices@aol.com

Bradley R. Perkins  
Exelon Business Services Company  
10 S. Dearborn St., 49th Fl.  
Chicago, IL 60603  
brad.perkins@exeloncorp.com

### NOTICE OF ADMINISTRATIVE LAW JUDGE'S RULING

Dear Sir/Madam:

Notice is hereby given by the Administrative Law Judge that Respondent's motion to implead additional parties is denied. At issue in this Complaint case is whether the Complainant owes ComEd money for electric service provided to 3939 W. Ogden Ave., Chicago, IL. The Commission has jurisdiction over regulated utilities. The Commission has no jurisdiction over non-regulated parties who have not brought themselves before the Commission.

Notice is also given by the Administrative Law Judge that pursuant to the objection of the Respondent, the allegations of the Amended Formal Complaint citing Sections 1-102 and 8-101 of the PUA incorporated by reference from the Original Formal Complaint are stricken.

Sincerely,

*Elizabeth A. Rolando*  
Elizabeth A. Rolando  
Chief Clerk

EAR:cfr  
Administrative Law Judge Hilliard

cc: John Parise Jr., Senior Administrator, Regulatory Strategies & Services, Commonwealth Edison Company, 440 S. LaSalle St., Ste. 3300, Chicago, IL 60605,  
john.parise@exeloncorp.com